SUPREME COURT, U.S.
FILED
NOV 14 1973

No. 73-533

# In the Supreme Court of the United States

OCTOBER TERM, 1973

BURTON R. SIGNER, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

# In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-533

BURTON R. SIGNER, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of Ohio, petitioner was convicted on one count each of tax evasion and filing of a false income tax return, in violation of Sections 7201 and 7206, Internal Revenue Code of 1954. On appeal, the Sixth Circuit reversed and remanded for a new trial on the ground that remarks made by the prosecutors deprived petitioner of a fair trial (Pet. App. 15-24).

Petitioner's sole complaint (Pet. 4-6) is that the Fifth Amendment prohibition of double jeopardy and the Fourteenth Amendment requirement of due process bar any further trial for these offenses. It has long been established, however, that "a person can be tried a second time for an offense when his prior conviction for that same offense has been set aside by his appeal." *Forman* v. *United States,* 361 U.S. 416, 425. This rule

was originally established in *United States* v. *Ball,* 163 U.S. 662, 672, and has recently been reaffirmed in *United States* v. *Jorn,* 400 U.S. 470, 484. See also *Bryan* v. *United States,* 338 U.S. 552, 560; *Green* v. *United States,* 355 U.S. 184, 189; and *North Carolina* v. *Pearce,* 395 U.S. 711, 719-720.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
*Solicitor General.*

NOVEMBER 1973.

DOJ-1973-11